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TREATY WITH THE KINGDOM OF THAILAND ON COOPERATION IN THE EXECUTION OF PENAL SENTENCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A TREATY ON COOPERATION IN THE EXECUTION OF PENAL SENTENCES BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND, SIGNED AT BANGKOK ON OCTOBER 29, 1982

SEPTEMBER 21, 1983.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 21, 1983.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and the Kingdom of Thailand on Cooperation in the Execution of Penal Sentences, which was signed at Bangkok on October 29, 1982.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender as well as the approval of the authorities of the two Governments would be required.

This Treaty is significant because it represents an attempt to resolve a situation which has inflicted substantial hardships on a number of citizens of each country and has caused concern to both Governments. The Treaty is similar to those currently in force with Bolivia, Canada, Mexico, Panama, Peru and Turkey. I recommend that the Senate give favorable consideration to this Treaty at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 15, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit a Treaty Between the United States of America and the Kingdom of Thailand on Cooperation in the Execution of Penal Sentences which was signed at Bangkok on October 29, 1982. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty is similar to those currently in force with Bolivia, Canada, Mexico, Panama, Peru and Turkey. It would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender as well as the approval of the authorities of the two Governments would be required.

The Treaty is intended to relieve the special hardships on prisoners incarcerated far from home, to improve the prospects for rehabilitation of offenders, and also to relieve the strains that can arise in diplomatic and law enforcement relations between the two countries because of the imprisonment of a number of each country's nationals in the institutions of the other. It constitutes part of an ongoing effort to improve relations between the two countries.

The basic terms of the Treaty are as follows: The Treaty generally applies to a prisoner who has been convicted and sentenced for an offense punishable as a crime in both the sentencing country and the country to which the offender is to be transferred provided that the prisoner is a national of the latter country, the sentence is final, no appeal is pending, and the provisions of the sentence, other than the period of detention, have been complied with. However, certain categories of prisoners are excluded from transfer under the Treaty. These include offenders: (1) who have committed an offense against the internal or external security of the State; against the head of State of the Transferring State or a member of his family; or against legislation protecting national art treasures, (2) who have less than one year of their sentence remaining to be served at the time of application for transfer, (3) who face further legal proceedings in the Transferring State, or (4) who have not served any minimum period stipulated by the law of the Transferring State.

The fourth exclusion, which appears in Article II, paragraph 6, was included at the insistence of the Thais. It particularizes the more general provision in our other treaties that transfer is contingent upon the consent of both the state which sentenced the prisoner (the Transferring State) and the state which is to receive and confine him (the

Receiving State). During the negotiations, the Thai negotiators informed us that they planned to include in their implementing legislation a provision that would require a foreign prisoner incarcerated in Thailand to have served one-third of his sentence, or four years, whichever is less, prior to transfer.

When a prisoner has been transferred the following procedures govern his treatment: The original sentence carries over to his new confinement, preserving deductions for good behavior in prison and during pre-trial confinement. The Transferring State retains the power to grant pardon or amnesty. With these exceptions, the execution of the sentence is to be carried out according to the rules and practices prevailing in the state to which he is transferred (Article V). In particular, the rules of the Receiving State as to parole will determine the date on which the prisoner is released from confinement. Any collateral attack on the sentence must proceed through the courts of the country which imposed the sentence. (Article IV).

The Treaty may be implemented under Public Law 94–144; no new legislation will be proposed.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty on Cooperation in the Execution of Penal Sentences Between the Government of the United States of America and the Government of the Kingdom of Thailand

The Government of the United States of America and the Government of the Kingdom of Thailand,

Taking into consideration the laws and regulations in force regarding law enforcement of the Parties and the desirability of enhancing their cooperative efforts in law enforcement and the administration of justice; and

Desiring to cooperate in the execution of penal sentences by enabling offenders to serve sentences of imprisonment, confinement or other forms of deprivation of liberty in the country of which they are nationals, thereby facilitating their successful reintegration into society;

Have agreed as follows:

ARTICLE I—DEFINITIONS

For the purposes of this Treaty:

1. "Transferring State" means the Party from which the offender is to be transferred;

2. "Receiving State" means the Party to which the offender is to be transferred;

3. "Offender' means a convicted person who, in the territory of either Party, has been convicted of a crime and sentenced either to a term of imprisonment, confinement or other form of deprivation of liberty, or to conditional release, probation or other form of supervision without confinement. The term shall include a person subject to confinement, custody or supervision under the law of the Transferring State respecting juvenile offenders.

ARTICLE II—SCOPE OF APPLICATION

The application of this Treaty shall be subject to the following conditions:

1. That the offense, for which the offender to be transferred was convicted and sentenced, is one which would also be punishable as a crime in the Receiving State had the offense been committed in the Receiving State. This condition shall not be interpreted so as to require that the crimes described in the laws of the two Parties be identical in matters not affecting the character of the crimes such as the quantity of property or money taken or possessed or the presence of a jurisdictional element such as interstate criminal activity.

2. That the offender to be transferred is a national of the Receiving State.

3. That the offender to be transferred did not commit an offense:

(a) against the internal or external security of the State;

(b) against the Head of State of the Transferring State or a member of his family; or

(c) against legislation protecting national art treasures.

4. That there is at least one year of the offender's sentence remaining to be served at the time of his application for transfer.

5. That no further or other legal proceedings relating to the offense or any other offense are pending in the Transferring State.

6. That, in the case of imprisonment, confinement or other form of deprivation of liberty, the offender shall, at the time of transfer, have served in the Transferring State any minimum period of the sentence stipulated by the law of the Transferring State.

7. That the transfer may be refused if:

(a) it is considered by the Transferring State to jeopardize its sovereignty, its security or its public order; or

(b) the offender is also a national of the Transferring State.

ARTICLE III—PROCEDURE FOR TRANSFER

1. Either Party may inform an offender, who is within the scope of the present Treaty, of the substance of the Treaty.

2. Every transfer under this Treaty shall be commenced through diplomatic channels by a written request from the Receiving State to the Transferring State. If the Transferring State approves the request, it shall so inform the Receiving State through diplomatic channels and initiate procedures to effectuate the transfer of the offender.

3. In deciding upon the transfer of an offender, each Party shall consider the following factors:

(a) The probability that transfer of the offender will contribute to his social rehabilitation or otherwise be in his best interests; and

(b) The nature and severity of the offense, including the effects of the offense within the Transferring and Receiving States and any mitigating or aggravating circumstances.

4. No offender shall be transferred unless:

(a) he is under a sentence of imprisonment for life;

(b) the sentence which he is serving states a definite termination date, or the authorities authorized to fix such a date have so acted; or

(c) he is subject to confinement, custody or supervision under the law of the Transferring State respecting juvenile offenders.

5. The Transferring State shall furnish to the Receiving State a statement showing the offense of which the offender was convicted, the termination date of the sentence, the length of time already served by the offender, and any credits to which the offender is entitled on account of work done, good behavior or pretrial confinement.

6. The Transferring State shall furnish to the Receiving State a certified copy of all judgments and sentences concerning the offender from the date of his detention in the Transferring State. When the Receiving State considers such information insufficient, it may request additional information.

7. Delivery of the offender by the authorities of the Transferring State to those of the Receiving State shall occur at a place within the Transferring State agreed upon by both Parties. The Transferring State shall afford an opportunity to the Receiving State, if the Receiving State so desires, to verify, prior to the transfer, that the offender's

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consent to the transfer is given voluntarily and with full knowledge of the consequences thereof, through the officer designated by the law of the Receiving State.

ARTICLE IV—RETENTION OF JURISDICTION

In respect of sentences to be executed pursuant to this Treaty, the Transferring State shall retain exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them, and any procedures for revision, modification or cancellation of judgments and sentences pronounced by its courts. The Receiving State, upon being informed of any revision, modification or cancellation of such a judgment or sentence, shall put such measure into effect.

ARTICLE V—PROCEDURE FOR EXECUTION OF SENTENCE

1. Except as otherwise provided in this Treaty, the completion of a transferred offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, probation and parole, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release or otherwise. The Transferring State shall, in addition, retain a power to pardon the offender or to commute his sentence and the Receiving State shall, upon being notified of such pardon or commutation, give effect thereto.

2. The Receiving State may treat under its law relating to juvenile offenders any offender so categorized under its law regardless of his status under the law of the Transferring State.

3. No sentence of deprivation of liberty shall be enforced by the Receiving State in such a way as to extend it beyond the period specified in the sentence of the court of the Transferring State.

4. The expenses incurred in the transfer of the offender or in the completion of the offender's sentence shall be borne by the Receiving State.

5. The authorities of either Party shall at the request of the other Party provide reports indicating the status of all offenders transferred under this Treaty, including, in particular, the parole or release of any offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

6. The transfer of an offender under the provisions of this Treaty shall not create any additional disability under the law of the Receiving State beyond that which the fact of his conviction may in and of itself already have created.

ARTICLE VI—TRANSIT OF OFFENDERS

If either Party enters into an agreement for the transfer of offenders with any third State, the other Party shall cooperate in facilitating the transit through its territory of offenders being transferred pursuant to such agreement. The Party intending to make such a transfer will give advance notice to the other Party of such transit.

ARTICLE VII—IMPLEMENTING PROCEDURE

1. In implementing this Treaty either Party may establish procedures and criteria consistent with its purpose and object for determining whether or not to consent to the transfer of an offender.

2. Each Party shall establish by legislation or regulation the procedures necessary to give legal effect within its territory to sentences pronounced by courts of the other Party, and each Party agrees to cooperate in the procedures established by the other Party.

3. Each Party shall designate an authority to perform the functions provided in this Treaty.

ARTICLE VIII—FINAL PROVISIONS

1. This Treaty shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. This exchange of instruments of ratification shall take place at Washington as soon as possible.

2. The present Treaty shall remain in force for three years from the date upon which it enters into force. Thereafter, the Treaty shall continue in force until ninety days from the date upon which either Party gives written notice to the other Party of its intention to terminate the Treaty.

In Witness Whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

Done at Bangkok this 29th day of October, 1982 in duplicate, in the English and Thai languages, each text being equally authentic.

For the Government of the United States of America
WILLIAM FRENCH SMITH,
Attorney General of the United States of America.

For the Government of the Kingdom of Thailand
SIDDHI SAVETSILA,
Air Chief Marshal, Minister of Foreign Affairs of Thailand.

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